IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1291 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)
Versus
SULEMAN F GHANCHI C/O.J S BRAHMBHATT - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MR JS BRAHMBHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 19/06/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.H.S.Munshaw, appearing on behalf of petitioner and learned

Advocate, Mr.J.S.Brahmbhatt, appearing on behalf of respondent.

2. In the present petition, the petitioner has challenged the award passed by Industrial Tribunal, Vadodara in Reference (IT) No.12 of 2004 dated 30.8.2005, whereby, the Industrial Tribunal has set aside the punishment order dated 29.10.2000 imposing punishment of stoppage of two increments with cumulative effect.

3. Initially, this Court has issued Rule and ad-interim relief in terms of Para.8(C) was granted. Today, with the consent of both the learned Advocates, matter is taken up for final hearing.

4. Learned Advocate, Mr.Munshaw, submitted that due to negligent driving of the respondent workman, two persons died in the said accident. Therefore, punishment imposed initially by the Corporation of stoppage of five increments with cumulative effect has been modified to the

stoppage of two increments with cumulative effect, has been wrongly set aside by the Tribunal. He also emphasized that looking to the gravity of misconduct, initially by an order dated 31.5.2001, the competent authority has imposed the punishment of stoppage of five increments with permanent effect. Thereafter, workman has filed appeal before the appellate authority, wherein, punishment has been reduced from 5 years to 2 years. Against which, no second appeal was filed by the petitioner. He submitted that cyclist dashed on left side of the bus. Sufficient care has not been taken by the driver and he was driving the vehicle in full speed. Therefore, he has no control on the bus and that is how the accident occurred. Therefore, according to him, respondent workman was found to be negligent in driving the vehicle and because of the accident, two persons died, therefore, interference by Tribunal is not in accordance with law. He, therefore, submitted that Tribunal has committed gross error in setting aside the

said punishment.

5. Learned Advocate, Mr.Brahmbhatt, submitted that no eye witness was examined in departmental inquiry. The charge sheet was served on the basis of police papers. The workman was declared acquitted in criminal case. Therefore, Industrial Tribunal has rightly appreciated the evidence. He also submitted that evidence of reporter is very clear that serious efforts were made by the driver to save the cyclist, but, unfortunately, said accident occurred in which driver was not responsible at all. He also submitted that the punishment has been imposed on the basis of presumption and no direct legal evidence was available in inquiry. Therefore, the finding has rightly been declared perverse by the Tribunal.

6. I have considered the submissions made by both the learned Advocates and have also perused the award passed by Industrial Tribunal, Vadodara. The facts are not much in dispute. No

doubt, it is true that two persons died in the said accident, but for imposing the punishment, the Corporation should have to prove charges by legal evidence that workman was negligent in driving the vehicle. No such evidence was led in departmental inquiry. The charge sheet was served on the basis of police papers and report of reporter based on polic papers, who was not an eye witness. The conductor was examined in inquiry but, he was not aware about the accident. However, he made it clear before the Inquiry Officer that bus was in slow speed and he has not heard any impact on the bus, but some how the bus was stopped by the driver and he was made aware that there was an accident. The conductor in his evidence on two occasions stated that bus was in normal speed and not in excessive speed. The reporter also in Para.10 of his evidence before the competent authority stated that cyclist lost his balance and dashed with left side of the bus and driver made serious efforts to save the cyclist and for that, he took the bus on divider.

These facts have been admitted by the reporter. Except reporter and conductor, no other person is examined in inquiry. Therefore, there was no sufficient evidence led by the Corporation against the respondent workman holding him responsible for the said accident. This aspect has been properly appreciated by the Industrial Tribunal, Vadodara while passing such award. Therefore, according to my opinion, the Industrial Tribunal has not committed any error which require any interference by this Court while exercising the power under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Accordingly, present petition is dismissed. Rule discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

(vipul)